

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7753 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 - Yes, 3 to 5- No

ABDULSULTAN A MANJI

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL, Sr. Advocate with MR AKIL KURESHI
for Petitioners
Ms MANISHA LAVKUMAR, AGP for Respondent No. 1
MR SN SHELAT for Respondent Nos. 2 and 3
RULE SERVED for Respondent No. 4
MR JR NANAVATI for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 4/11/1999

CAV JUDGEMENT

Through this petition under Article 226 of the Constitution, retired principals of law colleges in the State of Gujarat in the evening of their life, have been knocking the doors of this Court for the last eight years for claiming the benefits of the pension scheme.

2. The petition was filed by seven retired principals of Law Colleges. One of them (petitioner No. 1) has already expired during pendency of the petition, and his heirs have not come forward for being brought on record since, the Court is informed, they have migrated to another country. The petition is, therefore, pursued by the remaining six petitioners whose service particulars are as under :-

Sr. Name of the petitioner Date of Date of
No. appointment retirement

2. Chhotalal C. Trivedi 03.08.1959 31.12.1982
3. Narendra Somath Pandya 15.06.1961 03.07.1985
4. Bhanuprasad M. Gandhi 14.12.1963 31.10.1987
5. Narharilal C. Jani 13.11.1961 31.12.1988
6. Prafulbhai R. Desai June, 1966 01.01.1991
7. Prakashchandra S. 10.06.1968 31.10.1989
Trivedi

All the petitioners were working as members of the full time teaching staff of the non-government Law Colleges affiliated to Gujarat University, South Gujarat University, North Gujarat University or the Saurashtra University. All the petitioners retired as principals of the respective Law Colleges on the dates above mentioned. The petitioners served as full time professors and thereafter as principals of the respective Law Colleges during the aforesaid period.

3. The petitioners have come out with the following case in the petition :-

3.1 In the year 1967, the State Government decided to accept the University Grants Commission ('UGC' for short) recommendations for pay-scales and other conditions for the University teachers as well as for the teachers of the affiliated colleges including private affiliated Law Colleges. The scales were made effective from 1.4.1966. During the Fifth Five Year Plan, UGC made fresh recommendations and these recommendations were also

accepted by the Government of India and later on by the State Government. The recommendations were implemented by State Government Resolution dated 23.11.1976 with effect from 1.1.1973 from which date the pay-scales were revised. All the affiliated non-government Law Colleges were covered by the said resolution. The Government of India decided that the State Governments which adopt the revised pay scales in the Universities and affiliated colleges will be assisted by the Government of India for the period from 1.1.1973 to 31.3.1979 to the extent of 80% of the additional expenditure involved in giving effect to the revised pay subject to the following conditions :-

(i) The State Government will bear the entire balance of expenditure and will not pass on the liability for any portion of it to the University or the Managements of private colleges; and

(ii) The State Government will take over the entire responsibilities for maintaining the revised scales with effect from 1st April, 1979.

Thereafter by Government Resolution dated 14.9.1988 read with Government Resolution dated 19.3.1991 the pay-scales recommended by the Mehrotra Commission were made applicable to teachers in law colleges alongwith teachers in Arts, Commerce, Science and Education colleges with effect from 1.1.1986.

3.2 In the meantime by Government Resolution dated 15.10.1984 (Annexure "B"), the State Government granted pension to full time teaching staff of the Universities and of affiliated and aided non-government Arts, Science, Commerce and Educational Colleges, but did not include Law Colleges in the said scheme. The petitioners were agitating their grievance against full time law teachers being left out of the pension scheme. The representations were made through their Association also.

The Gujarat State Retired Professors Association challenged the aforesaid Resolution dated 15.10.1984, in so far as it was made applicable to teachers who retired on or after 1.4.1982. Special Civil Application No. 4449/88 filed by the Association was allowed by this Court and consequently the State Government issued Resolution dated 25.4.1991 (Annexure "D") extending the benefit of the pension scheme also to those teachers who had retired between 1.1.1973 and 1.4.1982.

3.3 However, the Government did not remove the discrimination in so far as law teachers were concerned, and hence the present petition came to be filed for the following reliefs :-

- (i) for a declaration that the Government Resolutions dated 15.10.1984 (Annexure "B") and dated 25.4.1991 (Annexure "D") in far as the same do not include the full time teaching staff of the affiliated non-government law colleges in the State of Gujarat for the purpose of pensionary benefits, are discriminatory, arbitrary and violative of Articles 14 and 16 of the Constitution.
- (ii) for a direction to the State Government to extend the benefits of Government Resolutions dated 15.10.1984 (Annexure "B") and dated 25.4.1991 (Annexure "D") to the full time teaching staff of the affiliated non-government law colleges in the State of Gujarat including the petitioners.

4. The petition came to be resisted by the affidavit in reply dated 16.7.1996 filed by Mrs. R.P. Joshi, Under Secretary to the Government of Gujarat in the Education Department. While acknowledging that the recommendations of the UGC were accepted by the State Government for extending the pay-scale of Rs.700-1600 to all the teachers including law college teachers with effect from 1.1.1973 and corresponding pay-scale of Rs.2200-4000 to all law college teachers with effect from 1.1.1986 pursuant to the recommendations of the Mehrota Commission, it is stated that non-government law colleges were not grantable till 1988-89. The affidavit in reply gives the following explanation for not giving grant to law colleges for payment of salary/pension to the full time teachers of such colleges :-

"The question with regard to extending the benefit of grant to the non Government law colleges, was often taken up for consideration. The committee under the Chairmanship of Mr Samuel Paul had recommended that the law colleges should be continued to be out side the Grant-in-Aid system as at present and therefore law colleges were not extended grant in aid till 1988-89. In para 5.30 of the report of the Committee on College Finances 1977, it is reported that the Management Association represented to us that the

teaching faculty in law colleges consists mainly of part time teachers or guest lecturers who are persons of eminence in the field of law and who deliver lectures in the law colleges, more for prestige or honour than for remuneration. It was further stated that most of the law colleges are having a surplus and are not in need of grant in aid. As the law colleges have not voiced any financial problem before us, we do not find purpose to make any change in the 'Status-Quo'. The Law colleges will continue to be outside the grant in aid list at present.

It is also to state that the law colleges are professional colleges, that all Law Colleges are profit making institutions and therefore resolution dated 27.7.1977 came to be passed that no grant shall be given to law colleges. Thereafter, vide Government Resolution dated 16.6.1989 it was decided that benefit of Grant is to be extended to the non Governmental law colleges wherein an option was given to the colleges that whether they want to accept the grant or not. However the said orders have been cancelled and the Government by its resolution dated 16.6.1989 has decided to include the private law colleges in maintenance grant in aid is true but the same has been revised vide Government Resolution dated 12.7.1990, under which, it is provided to give financial assistance at the rate of Rs.100/- per student, per term as a relief to non Government Law Colleges to meet with salary expenditure limited to deficit."

CONTENTIONS ON BEHALF OF PETITIONERS

5.0 At the hearing of this petition, Mr Girish Patel, learned counsel for the petitioners raised the following contentions :-

5.1 Full time teachers of affiliated non-government law colleges have been meted out all-round discrimination in the following manner :-

(a) There are some Universities like M.S. University of Baroda, which have their own law colleges for

imparting legal instructions at the undergraduate level. The teachers in such law colleges have all along been getting their salaries and pension from the Government. The petitioners were discharging the same duties as were being discharged by full time teachers at such law colleges.

(b) There are Government law colleges like the one at Rajkot where also undergraduate instructions in law are imparted and whose teachers have all along been getting their salaries and pension from the Government. The petitioners were also discharging the same duties as were being discharged by the full time teachers at such Government law colleges.

(c) Full time teachers of Arts, Science, Commerce and Education colleges affiliated to respondent Nos. 2 to 5 Universities were granted the benefit of pension scheme by the Government Resolution dated 15.10.1984 (Annexure "B") which was initially given with effect from 1.4.1982 and thereafter the date was taken back to 1.1.1973 (Annexure "D"). All the petitioners (i.e. petitioner Nos. 2 to 7) and other full time teachers in non-government affiliated law colleges having retired after 1.4.1982 were entitled to get the benefit of the pension scheme. The discriminatory treatment meted out to the petitioners and such other full time teachers of private affiliated law colleges was violative of the petitioners' fundamental rights under Articles 14 and 16 of the Constitution.

5.2 The Hon'ble Supreme Court has also held in State of Maharashtra vs. Manubhai P. Vashi, AIR 1996 SC 1, that full time teaching staff of affiliated non-government colleges cannot be meted out discriminatory treatment as compared to the full time teachers of private affiliated Arts, Science and Commerce colleges and that there is no justification for that discrimination. Such reasoning is also available to the petitioners for claiming the benefit of the pension scheme as was given to the full time teachers of affiliated private Arts, Science and Commerce colleges and also Education colleges in the State of Gujarat with effect from 1.4.1982 (which date was thereafter taken back to 1.1.1973). A Division Bench of this Court has also passed an order dated 16.1.1997 in Special Civil Application No. 10141 of 1996 directing the State

Government to implement the directions given by the Apex Court in the aforesaid case.

5.3 Even if law colleges are treated as professional colleges, the full time teachers of other professional colleges like Medical and Engineering colleges are getting the benefit of the pension scheme since long and, therefore, also the petitioners are entitled to get the reliefs prayed for.

5.4 Under the various statutes establishing the Universities which are respondent Nos. 2 to 5 herein, various statutory rules and regulations are framed. Ordinance No. 172 of Saurashtra University and similar ordinances of other Universities contain service conditions. Clause 17 thereof provides for pension to all full time teachers of all affiliated colleges except Government colleges. The terms of the said ordinance are binding on the law colleges, Universities as well as the State Government.

5.5 Non-payment of pensionary benefits to teachers of private affiliated law colleges and generally the negative step motherly stand of the Government for private law colleges is contrary to the letter and spirit of the various constitutional provisions including Articles 39A and 21 as enunciated by the Apex Court in Maharashtra vs. Manubhai P. Vashi, AIR 1996 SC 1.

5.6 Conferring the benefits of the pension scheme is not a matter of bounty or a matter of charity left to the arbitrary decision of the respondents. Pension is a right of every person who had put in requisite length of service for discharging duties of imparting education which is otherwise the function of the State. The right to pension inheres in Article 21 of the Constitution. In support of the said contention, reliance is placed on the decisions of the Apex Court in AIR 1965 SC 839, AIR 1993 SC 802, AIR 1995 SC 922 and 1995 (6) SCC 227.

SUBMISSIONS ON BEHALF OF STATE GOVERNMENT

6.0 On the other hand, Ms Manisha Lavkumar, learned AGP appearing for the State of Gujarat has opposed the petition and made the following submissions :-

6.1 Law colleges were not aided institutions till 1989 by which time almost all the petitioners had retired. Hence, merely adding the words "Law colleges" in the Government Resolution dated 15.10.1984 is not going to benefit any of the petitioners. Therefore, this

Court may not undertake the futile exercise of examining the question of discrimination against teachers of private affiliated law colleges.

6.2 The petition deserves to be dismissed on the ground of delay, laches and acquiescence. The Resolution dated 15.10.1984 is sought to be challenged after seven years.

6.3 The question whether private law colleges should have been included in the Government Resolution dated 15.10.1984 or whether law colleges should be given any grant or not are all matters of policy which cannot be the subject matter of judicial review under Article 226 of the Constitution.

6.4 What the petitioners are claiming, for all practical purposes, is retrospective effect to the Government Resolution dated 5.9.1997 which was issued by the Government for implementing the interim directions given by this Court in Special Civil Application No. 10141/96 filed by the Gujarat State Bar Council. It was by the said decision that for the first time the State Government decided to extend the grant-in-aid scheme to recognized private affiliated law colleges. As per the principles enunciated by the Hon'ble Supreme Court in V. Kasturi vs. Managing Director, SBI, AIR 1999 SC 81, the persons like the petitioners, who were not pensioners in the year 1996-97 with effect from which the aforesaid resolution dated 5.9.1997 came to be implemented, cannot claim the benefit of the pension scheme now available to the full time teachers in such law colleges who have retired in the academic year 1996-97 or thereafter.

6.5 Allowing the petition would open a pandora's box in as much as a large number of other retired teachers of non-aided private affiliated law colleges would come forward for claiming the similar benefits, and even non-teaching staff of such colleges may come forward for claiming such benefits and if the Government Resolution dated 15.10.1984 is held to be applicable to all such colleges, the said resolution, which was given effect from 1.1.1973, would create absolutely new and un contemplated liabilities and would cast a heavy burden on the public exchequer.

7. The learned counsel for the Universities submitted that the Universities may not be saddled with any liability, and that this is a policy matter where the submissions made on behalf of the State Government may be duly considered.

8. This Court has given anxious thoughtful consideration to the rival submissions made by the learned counsel for the parties and finds that though the submissions made by the learned AGP on behalf of the Government are quite persuasive, the balance tilts in favour of the petitioners for the reasons stated hereinafter.

PRELIMINARY OBJECTION

9.0 Whether the petition deserves to be dismissed on the ground of delay.

9.1 As regards the preliminary objection raised by the learned AGP about delay in filing the petition, it is pointed out on behalf of the petitioners that the petitioners through their Association called "the Gujarat State Law Teachers Association" were agitating the issue before the State Government through a number of representations submitted orally as well as in writing to the State Government and the petitioners were assured that due consideration will be given to their representations. Copies of such representations made on 14.9.1985 (Pg. 41), 29.13.1989 (Pg. 47) and 14.8.1991 (Pg. 48) are on the record of the petition. However, the State Government did not relent and finally refused to accede the benefits to the petitioners and other law teachers by their reply dated 8.8.1991 (Annexure "E" Pg. 52) rejecting the option form exercised by petitioner No. 1 under the Government Resolution dated 25.4.1991.

9.2 Now it cannot be gainsaid that though there is some delay in filing the petition, the petitioners and their Association were agitating the issue time and again. It was when the Government did not remove the discrimination even while issuing the Resolution dated 25.4.1991 extending the benefit to a larger class of teachers who retired between 1.1.1973 and 31.3.1982 but did not accept the representations made by the full time law teachers that the present petition came to be filed in October, 1991. In view of the fact that the discrimination meted out to the teachers in private affiliated law colleges has been found to be unjustified by the Apex Court as well as by this Court and, therefore, the petitioners have a good case on merits, this Court would not be inclined to dismiss the petition on the ground of delay alone, more particularly when that aspect can be taken care of while moulding the reliefs by not awarding any interest on the arrears of pension till the date of filing the petition.

9.3 In this connection, this Court would refer to the following observations made by Their Lordships of the Supreme Court in case of R.S. Deodhar vs. State of Maharashtra, AIR 1974 SC 259 :-

"The rule which says that a Court may not inquire into belated or stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be followed on the facts of each case.

It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay. It may be noticed that the claim for enforcement of the fundamental right of equal opportunity under Art. 16 is itself a fundamental right guaranteed under Article 32 and this Court which has been assigned the role of a sentinel on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay or the like."

In the instant case, granting the reliefs to the petitioners would not take away the rights which have accrued to others and the discriminatory treatment meted out to the full time teachers of private affiliated Law Colleges cannot be allowed to be perpetuated on the jejune ground of laches, delay or the like, but, as stated above, this would be one of the relevant factors to be taken into account while moulding the reliefs.

Law Collges - Non-aided institutions prior to 1988-89

10. The next question is whether it will make any difference to the petitioners' claim on merits that private affiliated law colleges were not aided institutions prior to 1988-89. The petitioners' grievance is about the discrimination against teachers of law colleges in the Government Resolution dated 15.10.1994 (Annexure "B"). The relevant portion of the

said Government Resolution reads as under :-

"The question of application of pension, gratuity and other retirement benefits to the members of teaching staff of the University under Education Department and in affiliated and aided non-government colleges in Gujarat was under consideration of the Government for some time past. After careful consideration, Government is now pleased to direct that the pension, gratuity and other retirement benefits admissible to the Gujarat State Governments Servants under the revised Pension Rules, 1950 contained in the Appendix XIV-C to BCSR Rules, Volumes II, as amended from time to time, the family pensions scheme sanctioned in Government Resolution Finance Department No. FPS-1071-J dated 1.1.72 as amended from time to time should be made applicable to the full time teaching staff of the universities under the Education Department and in affiliated and aided non-Government Arts, Science, Commerce and Education Colleges in this State with effect from 1.4.1982.

1. a) for the purpose of this scheme :-

(1) University means universities
under Education Department
established by the Acts.

(2) A non-Government College includes
non-Government affiliated Arts,
Science, Commerce and B.Ed.
Collges receiving grant-in-aid
and managed by the private body
and affiliated with the
universities by the competent
authority."

The learned AGP strenuously submitted that since the law colleges were not aided institutions, insertion of the words "law colleges" in the Government Resolution dated 15.10.1984 will not be of any avail to the petitioners or other teachers of such private affiliated law colleges. This contention is certainly prima facie attractive if one were to frame the question to be considered as :

"whether law colleges should be included within

the scope of the Government Resolution dated 15.10.1984".

11. The petitioners have, however, raised a wider question whether there was any justification in not giving financial aid to the private affiliated law colleges prior to 1988-89. The plea of discrimination is not aimed merely at non-inclusion of the law colleges within the scope of the Government Resolution dated 15.10.1984, but the gravamen of the charge of discrimination is against the discriminatory treatment meted out to the teachers of private affiliated law colleges by not giving aid to such law colleges. This Court, therefore, rejects the contention urged on behalf of the State Government and holds that the petition is not confined to the narrow question whether law colleges were wrongly excluded from the scope of the Government Resolution dated 15.10.1984, but the controversy is on the wider canvass whether the teachers of law colleges were wrongly excluded from the benefit of payment of grant to the law colleges for payment of salaries and pension to full time teachers in such law colleges. In this connection, the learned counsel for the petitioners has rightly pointed out that no justification is given for treating the private affiliated law colleges on a different footing than the law colleges run by the State Government or by Universities where they are discharging the same function. There is also no justification for discrimination against full time teachers of law colleges vis-a-vis the full time teachers of Arts, Science, Commerce and Education colleges except that law colleges were alleged to be profit making institutions with surplus income and part-time teaching staff. This assumption made by the Paul Committee in 1977 could not have been accepted as valid for all time to come, especially when the petitioners and the Gujarat Law Teachers Association were clamouring for grant-in-aid to law colleges for payment of salary and pension to full time teachers since 1985 onwards.

So also, there is no justification for discrimination vis-a-vis the full time teachers of other professional colleges like Medical and Engineering Colleges. In case of State of Maharashtra vs. Manubhai P. Vashi, AIR 1996 SC 1, the Hon'ble Supreme Court has in unmistakable terms held as under :-

"These aspects necessarily flowing from Articles 21 and 39A of the Constitution were totally lost sight of by the Government when it denied the grant-in-aid to the recognized private law

colleges as was afforded to other faculties. We would add that the state had abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39A of the Constitution mandates or casts a duty on the State to afford grant-in-aid to recognized private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear."

It has, therefore, to be held that the discriminatory treatment meted out to the full time professors of private affiliated law colleges was discriminatory and violative of the petitioners' fundamental rights under Articles 14 and 16 of the Constitution.

RETROSPECTIVE EFFECT - Will Kasturi kill the law teachers' claim.

12. Ms Manisha Lavkumar, learned AGP would, still however, urge that the petitioners are seeking retrospective effect for operation of the Government Resolution dated 5.9.1997 and that when the said resolution was issued and the effect thereof was given from 1996-97 in view of the interim directions of the Division Bench of this Court, the petitioners did not belong to the class of pensioners. Hence, giving the petitioners the benefit of the pension scheme with effect from 1982 and thereafter would amount to giving retrospective effect to the Government Resolution dated 5.9.1997. Strong reliance has been placed on the decision of the Apex Court in the case of V. Kasturi vs. M.D., State Bank of India, AIR 1999 SC 81 wherein the Apex Court enunciated the following principles :-

"Category I

21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new

formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case (AIR 1983 SC 130) would cover this category of cases.

Category II

22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme the erstwhile non-pensioner who had retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter, Calcutta vs. Capt. Biplabendra Chanda, (1997) 1 SCC 208 and Govt. of Tamil Nadu v. K. Jayaraman, (1997) 9 SCC 606 and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such

additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit."

(emphasis supplied by the learned AGP)

Since at the time of retirement the petitioners admittedly did not belong to the class of pensioners and since the Government Resolution dated 5.9.1997 was given effect only from the academic year 1996-97 pursuant to the interim directions dated 16.1.1997 given by this Court in Special Civil Application No. 10141 of 1996 the learned AGP strenuously urged that the petitioners' case fell in the second category as explained in the aforesaid decision.

13. At first blush the contention of the learned AGP may deserve acceptance and the petition may prima facie be liable to be dismissed in view of the above submission. However, this Court is of the view that the petitioners' case is different and it is similar to the case of the petitioners in *Dhanraj vs. State of J & K.*, (1998) 4 SCC 30, where the facts of the said case, the reasoning given by the Apex Court in the said case and the distinguishing features noticed by the Apex Court are to be found in para 17 of the judgment in the case of *V. Kasturi vs. M.D. State Bank of India (Supra)*. The same are reproduced hereunder :-

"17. Learned counsel for the appellant then invited out attention to a decision of this Court in *Dhanraj v. State of J & K.* (1998) 4 SCC 30. In the said case the question for consideration before the Bench of two learned Judge of this Court was as to whether the employee of erstwhile State of Jammu & Kashmir who were later on absorbed by Jammu & Kashmir State Road Transport Corporation were entitled to pensionary benefits in terms of GO dated 3.10.86 when they retired from the service of the Corporation prior to 9.6.81. Relying on the strength of the said Govt. Order it was held by this Court that all erstwhile State employees would form one class and were entitled to get the benefit of the govt. Order dated 3.10.86 even though they might have retired prior to 9.6.81 which was the date on which Article 177 of J & K. Civil Services Regulations was amended by adding 3rd proviso to

it. The aforesaid decision is rendered in the peculiar circumstances of its own case and is based on the clear wordings of the Govt. Order dated 3.10.86 by which it was mandated to give uniform treatment to all the retirees from Corporation who were earlier State Govt. servants. They formed one and same class. It is in the light of the aforesaid fact situation examined by this Court in that Judgment that we have to appreciate the reasoning found in para 14 of the report on which strong reliance was placed by learned counsel for the appellant. It has been observed there in that even otherwise there was no justifiable criteria for the State Government to draw the line between those who retired earlier and those who retired after 9.6.81. Both such set of employees were equally placed in the same Undertaking/Corporation temporary in character and all having served in the organization for more than 20 years. These observations are to be appreciated in the light of the facts examined by this Court in this decision. The State of Jammu & Kashmir was dealing with the very same class of employees who were all ex-employees of the State Govt. who had subsequently been absorbed by the Corporation and thereafter had retired. As all of them formed the same class, the same treatment was required to be given to them in connection with the pensionary benefits made available by the State Govt."

(emphasis supplied)

It would be seen from the aforesaid observations that if the petitioners make out a case that the petitioners were treated unequally and that they were wrongfully left out of the class of pensioners who were similarly situate as the petitioners, Kasturi case would not come in the way of granting them the declaration prayed for and the consequential reliefs as the case of Dhanraj (Supra) is not overruled or held to be not good law, but is merely distinguished by the Apex Court in V. Kasturi (Supra).

14. Applying the aforesaid principles to the facts of the present case, it is clear that what the petitioners are challenging is discrimination against full time teachers of private affiliated law colleges vis -a-vis the full time teachers of Arts, Science and Commerce colleges as well as full time teachers of professional

colleges. As already held above, once the discrimination is shown to be unjustified and unjustifiable and violative of the petitioners' fundamental rights under Articles 14 and 16 of the Constitution and once it is held that the full time teachers of private affiliated law colleges are required to be treated on the same footing as the full time teachers of Arts, Science, Commerce and Education colleges, the petitioners' claim cannot be defeated merely because the plea of such discrimination came to be accepted subsequently and the decision was subsequently taken to extend the similar treatment to full time teachers of such law colleges. Subsequent admission of the mistake merely confirms the justification of the petitioners' claim. It cannot thus be defeated on the ground that the petitioners are claiming retrospective effect. The crucial question in such cases would be whether the grievance was made or the petition was filed after the Government sought to remove the discrimination or whether the grievance was made and the petition was filed prior to removal of the discrimination. In the facts of the case, since the petitioners were making representations since 1985 onwards and the petition was also filed in the year 1991, subsequent issuance of the resolution in the year 1997 pursuant to the interim orders of this Court would not denude the petitioners of their legitimate rights flowing from the declaration being made by this Court that full time teachers of private affiliated law colleges were being meted out discriminatory treatment in the matter of grant for payment of salary and pension in violation of their fundamental rights under Articles 14 and 16 of the Constitution.

RELIEFS TO BE GRANTED

15. Apropos the apprehension voiced by the learned AGP about opening Pandora's box, Mr Girish Patel pointed out that apart from the fact that there are six petitioners who are seeking the benefit of the pension scheme, there would be hardly ten to fifteen other retired full time teachers in private affiliated law colleges who would be entitled to get the benefit of the judgment in case this petition is allowed. Moreover, the Government Resolutions dated 15.10.1984 (Annexure "B") and 25.4.1991 (Annexure "D"), with which this petition is concerned, only pertain to teachers and not to non-teaching staff. Hence, the Government need not be allowed to defeat the petitioners' just claim on the ground of unfounded apprehensions.

It appears to this Court that these aspects are

quite significant and sufficient to allay the apprehensions voiced by the learned AGP. This Court would certainly consider the same while allowing the petition and moulding the reliefs to be granted to the petitioners and other similarly situate retired full time teachers of law colleges by confining the benefit of this judgment to those who retired on or after 1.4.1982 which was the original date from which the Government Resolution dated 15.10.1984 (Annexure "B") was given effect and this Court would not stretch the date back to 1.1.1973 as was done by the Government Resolution dated 25.4.1991 (Annexure "D").

16. There is one more aspect which is required to be examined while granting the reliefs. Under the ordinance framed by the respective Universities, teachers who were appointed on or before 1.4.1982 and had retired on or after 1.4.1982 shall be entitled to petitionary benefits given by the State Government to its employees from time to time. For this purpose, Clause 17 of Ordinance 148 of the South Gujarat University reads as under :-

"17. Pension

A teacher who has been appointed on or before 1.4.1982 and has retired on or after 1.4.1982 and prior to the date of issuance of Education Department Government Resolution No. NGC/MISC-1582/9505/84/KH dated 25.4.1991 shall be entitled to pensionary benefits given by the State government to its employees from time to time.

A teacher who has been appointed on or after 1st April, 1982 shall automatically be governed by the pension scheme as per Government Resolution quoted above, such teachers shall not be allowed to opt for Contributory Provident Fund Scheme."

17. Admittedly, all the petitioners were appointed as teachers in affiliated law colleges prior to 1.4.1982 and petitioner Nos. 2 to 7 retired after 1.4.1982 and prior to 25.4.1991. Accordingly, it is clear that the petitioners were entitled to pensionary benefits given by the State Government to its employees from time to time and the petitioners shall be governed by the pension scheme as per the Government Resolution quoted above, but as all the petitioners were earlier compelled to be members of the contributory provident fund scheme and had no other option but to become the members of the contributory provident fund scheme and, therefore, while

giving them the benefits of the pension scheme, the amounts paid to them as employer's contribution to the Provident Fund will have to be deducted. It appears that the law colleges had made such contributions to the contributory provident fund scheme apart from the contributions from the law teachers themselves. Hence, it appears to the Court that the contributions made by the managements of the private affiliated law colleges should be required to be treated as commuted pension and that part of the contributory provident fund which is in excess of the commutable portion of the pension shall have to be adjusted against the arrears of pension which would be payable by the State Government to the petitioners and other law teachers who retired on or after 1.4.1982.

O R D E R

18. The petition is partly allowed to the following extent :-

A (i) The Government Resolution dated 15.10.1984 (Annexure "B"), in so far as the same did not include the full time teaching staff of non-aided affiliated non-government law colleges in the State for the purpose of pensionary benefits was discriminatory, arbitrary and violative of fundamental rights of the petitioners under Article 14 and 16 of the Constitution. Respondent No. 1 is hereby directed to extend the benefits of the said resolution to full time teaching staff of the affiliated non-government law colleges in the State who retired on or after 1.4.1982, including petitioners Nos. 2 to 7, notwithstanding the fact that such law colleges were not aided institutions prior to 1996-97.

(ii) The petitioners and other members of the full time teaching staff of such law colleges who retired on or after 1.4.1982 shall have the option of accepting the pension scheme as applicable to the government employees. While working out the amounts payable under the said scheme, the employer's contributions to the law teacher's provident fund shall be adjusted against the commutable portion of the pension. The balance amount, if any, payable by the law teachers towards refund of such contributory provident fund shall be adjusted against the

arrears of pension payable to the petitioners.

(iii) For making the above calculations, interest on the balance amount of contributory provident fund (after decuting the amount adjusted against the commuted pension) shall be calculated at the rate of 9% p.a. from the date of retirement till the amount is adjusted against the arrears of pension, but no interest shall be payable on the amount of arrears of pension payable to the retired law teachers by virtue of this judgment for the period from the date of retirement till 31.10.1991.

(iv) The amount of arrears of pension payable to law teachers who retired on or after 1.4.1982 shall be paid with interest at the rate of 9% p.a. from 1.11.1991 or the date of retirement, whichever is later, till the date of payment, or till the adjustment against refund of contributory provident fund as stated above.

B For the purpose of carrying out the above directions, the respondents shall, on their own or through the respective law colleges, work out the amounts payable to the petitioners and other full time teachers of non-government law colleges who retired on or after 1.4.1982 within three months from the date of receipt of the writ of this court or a certified copy of this judgment, whichever is earlier and thereafter the State Government shall make the payments of the amounts so worked out to the concerned retired teachers within six months from the date of receipt of the writ of this court or a certified copy of this judgment, whichever is earlier. If the directions given in this judgment are not complied with within the aforesaid time limit, the arrears of pension shall carry interest at the rate of 12% p.a. from 1.11.1999.

Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)